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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		<b>Docket Number (Optional)</b>
		<b>SCS-124-1117</b>
Application Number		Filed
10/534,498		May 10, 2005
First Named Inventor		Lewin
Art Unit	Examiner	
3662	T. Brainard	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the <input type="checkbox"/> Applicant/Inventor <input type="checkbox"/> Assignee of record of the entire interest. See 37 C.F.R. § 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> Attorney or agent of record 27,393 (Reg. No.) <input type="checkbox"/> Attorney or agent acting under 37CFR 1.34. Registration number if acting under 37 C.F.R. § 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*</p> <p><input checked="" type="checkbox"/> *Total of 1 form/s are submitted.</p>		

  
\_\_\_\_\_  
Signature  
Stanley C. Spooner  
\_\_\_\_\_  
Typed or printed name  
703-816-4028  
\_\_\_\_\_  
Requester's telephone number  
April 21, 2008  
\_\_\_\_\_  
Date

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CENTRAL FAX CENTER****APR 21 2008****STATEMENT OF ARGUMENTS IN SUPPORT OF  
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

The following listing of clear errors in the Examiner's rejection and his failure to identify essential elements necessary for a *prima facie* basis of rejection is responsive to the Final Official Action mailed December 21, 2007 (Paper No. 20070207).

All claims are rejected as obvious over the Sorimachi reference (U.S. Patent 4,867,570) in view of the Magarill reference (U.S. Patent 5,625,738) by itself or in combination with other cited prior art. As will be seen, independent claim 1 is not obvious in view of this combination.

**Error #1. The Examiner fails to demonstrate how or where the Magarill reference teaches the claim 1 elements admitted to be missing from Sorimachi, i.e., "a light source arranged to illuminate only part of the input face of a light guide" and the tube having reflective sides "being arranged together with projection optics so as to project an array of distinct images of the light source towards the scene"**

The Examiner alleges in the first sentence on page 3 of the Final Rejection that Magarill teaches portions of claim 1, but the Examiner misstates those portions. Claim 1 states the light source is arranged to "illuminate only part of the input face of a light guide" whereas the Examiner's quote ignores the "only" limitation. The Examiner cites Magarill's Figure 1 and column 6, lines 25-52 as support for this conclusion. While only a single ray 14 is shown, there is structure which prevents or limits light from other portions of reflector 6 from impinging upon the input face of the "light tunnel 2." Magarill specifically teaches at column 7, lines 5-9, that for maximum efficiency of light transmission "essentially all the exiting light is relayed to valve 12."

Magarill also teaches that the size of the single light spot at light valve 12 can be adjusted to match the active area of the valve (column 7, lines 34-40). Thus, Magarill does not contain any teaching of the claimed interrelationship of illuminating "only part of the input face of a light guide."

LEWIN et al  
Appl. No. 10/534,498  
April 21, 2008

Magarill also fails to teach the claimed interrelationship of the optics being arranged so as to "project an array of distinct images of the light source towards the scene." While page 3 of the Final Rejection contains a discussion with respect to Magarill teaching a tube having "substantially reflective sides," the Examiner does not even allege that Magarill teaches any projection of an image of the light source towards the scene. Thus, the Examiner has failed to demonstrate where Magarill teaches this claimed interrelationship from claim 1.

Absent the Examiner's pointing out where and how Magarill teaches the above two claimed interrelationships between structures which are positively recited in Applicant's claim 1, it will be taken as admitted that Magarill fails to contain such teaching.

**Error #2. Neither Magarill nor Sorimachi comprise "a ranging apparatus" as set out in the preamble of Applicant's claim**

While the Examiner alleges that Sorimachi teaches a "ranging apparatus," he does not indicate how or where the elements in Sorimachi are combined in any fashion to provide a "ranging apparatus." A "ranging apparatus" is discussed in the Background of Applicant's specification and is clearly understood by those of ordinary skill in the art. The Examiner has raised no questions with respect to the claim 1 requiring the elements to be combined to form a ranging apparatus.

Accordingly, the Examiner must show some teaching of elements in the prior art which provides a "ranging apparatus." The Examiner has failed to allege that neither Sorimachi nor Magarill teach a ranging apparatus.

LEWIN et al  
Appl. No. 10/534,498  
April 21, 2008

**RECEIVED**  
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**APR 21 2008**

**Error #3. Because none of the references teach (a) a “ranging apparatus” or (b) illumination of “only part of the input face” or (c) projecting “an array of distinct images of the light source towards the scene,” there is at least one claimed structure and two interrelationships which are not shown in any prior art**

As noted above, neither Magarill nor Sorimachi relate to a “ranging apparatus.” The Examiner admits Sorimachi does not teach illumination of “only part of the input face” and does not teach projecting “an array of distinct images.” As noted above in Error #1, Magarill, which is alleged by the Examiner to teach these missing structures, clearly does not. Therefore, even if the Sorimachi and Magarill references were combined as suggested by the Examiner, they would fail to disclose the claimed “ranging apparatus” which has the recited interrelationships, i.e., (a), (b) or (c) as noted in the subheading title.

It is simply impossible to support a rejection of claim 1 or any claims dependent thereon based upon the Sorimachi and Magarill references if there is no disclosure of the “ranging apparatus” comprised of elements having the two specifically claimed interrelationships set out in claim 1. The Examiner has simply not set forth a *prima facie* case of obviousness under 35 USC §103 and any further rejection of claim 1 and all claims dependent thereon is respectfully traversed.

**Error #4. The Examiner fails to provide any “reason” or “motivation” for combining references**

In its recent decision, the U.S. Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (April 2007), held that that “[t]o facilitate review [of the reason for combining references], this analysis should be made explicit.” *Id.* at 1396.

The Supreme Court in its *KSR* decision went on to say that it followed the Court of Appeals for the Federal Circuit’s advice that “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with

LEWIN et al  
Appl. No. 10/534,498  
April 21, 2008

some rational underpinning to support the legal conclusion of obviousness" (the Supreme Court quoting from the Court of Appeals for the Federal Circuit in *In re Kahn*, 78 USPQ2d 1329 (Fed. Cir. 2006)). The Examiner has provided no analysis of any reason for combining references and therefore has failed to meet his burden of establishing a *prima facie* case of obviousness.

**Error #5. Both Sorimachi and Magarill would lead one of ordinary skill in the art away from the claimed combination of elements**

As noted above, neither the Sorimachi nor Magarill references relate to a "ranging" apparatus and, in fact, teach combinations of elements to do substantially different things, i.e., Sorimachi is for determining three-dimensional information about an object (Abstract) and Magarill is to provide "uniform illumination of a light valve" (Abstract). In view of the Examiner's admission that Sorimachi does not teach the claimed "illumination means," the Examiner's sole reliance for such teaching is the Magarill reference.

Yet, the Magarill reference is specifically designed "for providing uniform illumination of a light valve" and not "an array of distinct images." Thus, instead of "distinct images," Magarill seeks to provide "light which is substantially uniform in power distribution over the surface area of the exit end" of the tunnel 2 and as applied to light valve 12 (see Abstract). This clear teaching would lead one of ordinary skill in the art away from Applicant's claimed combination of elements and interrelationships therebetween.

Sorimachi's failure to teach the claimed illumination means would lead one of ordinary skill in the art to provide the three-dimensional size information without using the claimed structures. As a result, both references would lead one of ordinary skill in the art away from Applicant's claimed combination.

LEWIN et al  
Appl. No. 10/534,498  
April 21, 2008

In accordance with applicable legal precedent, where one or both of the references teach away from the combination, any *prima facie* case of obviousness is clearly rebutted with the burden of proof shifted to the Examiner.

#### SUMMARY

As noted above, the Examiner admits that Sorimachi fails to teach a "ranging apparatus" or the two recited element interrelationships. Magarill is relied upon for the missing teaching, but the Examiner does not identify where the "ranging apparatus" or the two interrelationships are taught. Thus, even if combined, the Sorimachi/Magarill combination has not been demonstrated by the Examiner to disclose (a) the ranging apparatus or (b) and (c) the two claimed interrelationships. Clearly, the Examiner's fails to meet his burden of establishing a *prima facie* case of obviousness. Moreover, the Examiner's error in failing to recognize that both references would lead one of ordinary skill in the art away from the claimed combination clearly rebuts any *prima facie* case of obviousness.

As a result of the above, there is simply no support for the rejection of Applicant's independent claim 1 or claims dependent thereon under 35 USC §103. Applicant respectfully requests that the Pre-Appeal Panel find that the application is allowed on the existing claims and prosecution on the merits should be closed.